



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-05-88-PT
Date: 24 May 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Kevin Parker
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 24 May 2006

THE PROSECUTOR
v.
VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ
MILORAD TRBIĆ

**DECISION ON JOINT DEFENCE MOTIONS REQUESTING
THE TRANSLATION OF THE PRE-TRIAL BRIEF
AND SPECIFIC MOTIONS**

The Office of the Prosecutor:
Mr. Peter McCloskey

Counsel for the Accused:
Zoran Živanović for Vujadin Popović
John Ostojić and Christopher Meek for Ljubiša Beara
Jelena Nikolić and Stephane Bourgon for Drago Nikolić
Aleksandar Lazarević and Miodrag Stojanović for Ljubomir Borovčanin
Natacha Fauveau Ivanović for Radivoje Miletić
Dragan Krgović for Milan Gvero
Peter Haynes and Đorđe Sarapa for Vinko Pandurević
Colleen Rohan and Vesna Janjić for Milorad Trbić

SUBMISSIONS

1. Trial Chamber II of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seised of a “Requête du Général Miletic aux fins de traduction du mémoire préalable au procès dans la langue de l’accusé” filed on 21 March 2006;¹ subsequently Defence Counsel for Borovčanin, Gvero, Nikolić, Pandurević and Popović filed motions joining² (together “First Joint Motion”).
2. In the First Joint Motion it is requested that the Trial Chamber order that: (i) the Pre-trial Brief be translated into a language the Accused understands, and (ii) the time limit for filing the response to the Pre-trial Brief be extended until fourteen (14) days after the Pre-trial Brief has been translated into a language the Accused understand.
3. The Trial Chamber notes that the Prosecution has not filed a response to the First Joint Motion and that the Prosecution’s pre-trial brief was filed on 28 April 2006.
4. The Trial Chamber is further seised of a “Requête du Général Miletic aux fins de traduction de certaines requêtes du Procureur dans la langue de l’accusé”³, filed on 28 March 2006; subsequently Defence Counsel for Nikolić, Pandurević, Borovčanin and Gvero filed motions joining⁴ (together “Second Joint Motion”).
5. In the Second Joint Motion it is requested that the Trial Chamber: (i) order the translation of the Prosecution’s motions for judicial notice of adjudicated facts⁵ and admission of statements pursuant to Rule 92 *bis* of the Rules into a language the Accused understand; (ii) order the Prosecution, upon filing its motion for admission of statements pursuant to Rule 92 *bis* of the Rules,

¹ English translation was filed on 4 April 2006, “General Miletic’s Motion for Translation of the Pre-trial Brief in the language of the Accused”.

² “Borovčanin Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction du mémoire préalable au procès dans la langue de l’accusé’” filed on 22 March 2006 ; “Gvero Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction du mémoire préalable au procès dans la langue de l’accusé’” filed on 23 March 2006 ; “Motion on Behalf of Drago Nikolić Joining in the ‘Requête du Général Miletic aux fins de traduction de traduction du mémoire préalable au procès dans la langue de l’accusé’”, filed on 27 March 2006 ; “Vinko Pandurević’s Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction du mémoire préalable au procès dans la langue de l’accusé’”, filed on 28 March 2006 ; “Vujadin Popović Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction du mémoire préalable au procès dans la langue de l’accusé’”, filed on 29 March 2006.

³ English translation of the original motion was filed on 3 May 2006, “Motion by General Miletic for Translations of Specific Motions by the Prosecution in the Language of the Accused”.

⁴ “Motion on Behalf of Drago Nikolić Joining in the ‘Requête du Général Miletic aux fins de traduction de certaines requêtes du Procureur dans la langue de l’accusé’”, filed on 29 March 2006 ; “Vinko Pandurević’s Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction de certaines requêtes du Procureur dans la langue de l’accusé’”, filed on 30 March 2006 ; “Borovčanin Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction de certaines requêtes du Procureur dans la langue de l’accusé’”, filed on 29 March 2006 ; “Gvero Defence Notification on Joining the ‘Requête du Général Miletic aux fins de traduction de certaines requêtes du Procureur dans la langue de l’accusé’”, filed on 31 March 2006.

to transmit these statements to the Defence in a language the Accused understands; and (iii) to grant the Defence a fourteen day deadline to respond to the Prosecution's motions from the day the motions and 92 *bis* statements have been transmitted to the Accused in a language he understands.

6. The Prosecution responded on 7 April 2006 ("Response to Second Joint Motion").⁶ The Prosecution submits that it "only objects to one portion of the Miletić requests: the Prosecution does not consent to the translation of transcripts of prior witness testimony into BCS" sought to be admitted under Rule 92 *bis*(D) because this material is already available in a language the Accused understand in audio/video format.⁷

7. On 13 April 2006, the Defence for Drago Nikolić filed a request to file a reply as well as the reply itself ("Reply"),⁸ whereby it submits that the Second Joint Motion is not only concerned with prior testimony which may be admitted under Rule 92 *bis*(D) of the Rules, but is also concerned with statements that may be admitted under Rule 92 *bis*(B) of the Rules.

DISCUSSION

Pre-trial brief

8. The Defence argues that the right to be informed promptly and in detail in a language the Accused understand of the nature of the charges against them, as guaranteed in Article 21 of the Statute, includes a right to have the pre-trial brief translated. In support of its argument it is submitted, *inter alia*, that the pre-trial brief is a document containing additional details about alleged crimes not included in the indictment. The Defence relies on the *Kamasinski* judgment from the European Court of Human Rights, which held that "the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events" and submits that this right entails receiving certain documents, especially those containing charges against the Accused in a "practical and effective" manner.⁹

9. Previous case-law of the Tribunal provides that there is no general right to have pre-trial briefs translated. The Trial Chamber in the *Naletilić and Martinović* case held that "neither Article

⁵ The Prosecution's motion was not filed at the time of the submission by the Defence Counsel.

⁶ Prosecution's Response to Miletić's Motion Requesting Translation of Certain Prosecution Motions into the Language of the Accused.

⁷ Response to Second Joint Motion, para. 3.

⁸ Defence Motion on Behalf of Drago Nikolić Seeking Leave to Reply and Reply to the Prosecution's Response to Miletić's Motion Requesting Translation of Certain Prosecution Motions into the Language of the Accused, 13 April 2006.

⁹ See General Miletić's Motion for Translation of the Pre-trial Brief in the Language of the Accused, paras. 21-22, referring to *Kamasinski v. Austria*, Judgment of the ECHR, 19 December 1989, Case No. A 168 ("Kamasinski judgment").

21 of the Statute nor Rule 3 of the Rules explicitly entitle the accused to receive all documents from the Prosecutor in a language he understands”.¹⁰ The Trial Chamber in the *Ljubičić* case made a list, not including pre-trial briefs, of material which it considered the Accused had a right to receive in a language he understands during the pre-trial stage.¹¹

10. Only in one previous case did a Trial Chamber find it “necessary that the Accused be able to read the Prosecution’s Pre-trial Brief and other significant documents [...] in a language that they can understand”.¹² However, the present Trial Chamber notes that in that decision the Trial Chamber did not state that there was a right to such translation under Article 21 of the Statute. This Trial Chamber is of the view that the rights enshrined in Article 21 of the Statute do not include a right, as such, for translation of the Pre-trial Brief, and it is not convinced that the *Kamasinski* judgment gives rise to such an interpretation. The *Kamasinski* judgment states, *inter alia*, that the right to a fair trial “does not go so far as to require a written translation of all items of written evidence or official documents”¹³ and held in the case at hand that Mr. Kamasinski had been sufficiently informed of the nature of the accusations against him following an oral explanation in a language he understood of the indictment.¹⁴ It is, indeed, the Indictment that shall appropriately inform the Accused, in a language they understand, of the nature and cause of the charges against them. The pre-trial brief only serves to put the Defence on notice of the evidence the Prosecution intends to adduce at trial. It is the view of this Trial Chamber, therefore, that, unless the specific circumstances of the case warrant otherwise, the right of the Accused to be informed of the nature and cause of the charges against them in a language they understand does not require the translation of the pre-trial brief. In the present case, the Defence has not provided any basis suggesting that, in the specific circumstances of this case, a different approach ought to be taken.

11. Nevertheless, should the Defence wish to have a translation of the pre-trial brief, the Trial Chamber observes that such translation could be covered by the payment scheme for the Defence. According to paragraph 4 of the Payment Scheme for the Pre-trial stage of 1 April 2005, the lump sum payment received by the Defence Counsel from the Tribunal includes translation costs of documents other than those documents to be adduced as evidence, which are translated by the ICTY translation services (CLSS). Not included in this lump sum are translation costs incurred pursuant to Article 21(4) (a), (b) and (f) of the Statute, for which Defence Counsel may invoice the Tribunal separately, up to a maximum of 1,000 euros per month.

¹⁰ Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001.

¹¹ Decision on the Defence Counsel’s Request for Translation of All Documents, 20 November 2002.

¹² *Prosecutor v. Blagojević, Obrenović, Jokić and Nikolić*, Case No. IT-02-60-PT, Scheduling Order, 6 December 2002; p.2.

¹³ *Kamasinski* judgment, para. 74.

¹⁴ *Kamasinski* judgment, para. 81.

12. The Trial Chamber therefore dismisses the request for an order for translation of the pre-trial brief.

Rule 92 bis

13. As a preliminary matter, the Trial Chamber grants leave for the Defence for Drago Nikolić to file a Reply.

14. With regard to translation of Rule 92 bis material, the Trial Chamber stresses that it does not wish Counsel to attempt to re-litigate a decided issue. However, the Reply to Second Joint Motion clarifies that Counsel is not only concerned with prior testimony in the form of transcripts which may be admitted under Rule 92 bis(D) of the Rules, which the Trial Chamber already decided on in its decision of 6 March 2006 (“6 March Decision”),¹⁵ but also with statements that may be admitted under Rule 92 bis(B) of the Rules.

15. The Trial Chamber recalls the principle set out in the 6 March Decision in which it decided that Rule 66(A) of the Rules gives effect to Article 21(4)(a) of the Statute by its more detailed requirements of disclosure, and that material disclosed pursuant to Rule 66(A) must be in a language the accused understands, and that Rule 66(A)(ii) relevantly provides that “copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 bis” shall be made available by the Prosecution to the Defence in a language which the accused understands, and that it can be satisfied by disclosure of the specified material in audio format.

16. The Trial Chamber grants the request in that the Accused have a right to receive evidence the Prosecution requests to be admitted pursuant to Rule 92 bis in a language the Accused understand. In relation to prior testimony in the form of English transcripts which may be admitted under Rule 92 bis(D), the Trial Chamber has found in its 6 March Decision that the disclosure obligation set out in Rule 66(A)(ii) is met by providing BCS audio recordings of the respective testimony. In relation to statements proposed for admission under Rule 92 bis(B), the Trial Chamber finds that for statements that were taken or transcribed in English the disclosure obligation of the Prosecution can be satisfied by either providing the Accused with a written BCS (Bosnian/Croatian/Serbian) translation or the statement in BCS audio format, if available. With regard to translation of the 92 bis motion as such, the Trial Chamber denies the request.

¹⁵ Decision on Joint Defence Motion Seeking the Trial Chamber to Order the Registrar to Provide the Defence with BCS Transcripts of Proceedings in Two Past Cases Before the International Tribunal.

Adjudicated Facts Motion

17. The Trial Chamber notes that the Prosecution filed its motion for judicial notice of adjudicated facts on 5 May 2006¹⁶ and that Annex A, which lists the proposed facts, refers to specific paragraphs of the *Krstić* Trial and Appeals Judgements as well as to the *Blagojević and Jokić* Trial Judgement. All these judgements are already available in BCS. This request is therefore without merit with regard to the proposed adjudicated facts and the Trial Chamber denies translation of the motion as such.

Extension of time

18. Both the First Joint Motion and the Second Joint Motion have requested that the time limit for responding to the various motions and briefs are to be calculated from the date a translation is received. Pursuant to Rule 127 of the Rules, a Trial Chamber may on good cause being shown by motion, enlarge or reduce any time prescribed. In the present case, having found that the Accused have no right to translation of the proposed documents, the Trial Chamber does not consider that “good cause” have been shown, in the meaning of Rule 127 of the Rules. The Trial Chamber therefore denies the requests for extension of time.

DISPOSITION

FOR THE FOREGOING REASONS,

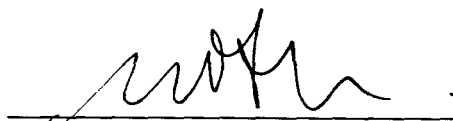
PURSUANT TO Article 21 of the Statute, and Rules 66 and 127 of the Rules,

THE TRIAL CHAMBER GRANTS IN PART the Second Joint Motion and **ORDERS** the Prosecution to disclose the 92 *bis*(B) statements in a language the Accused understand.

The First Joint Motion and Second Joint Motion are denied in all other respects.

Done in English and French, the English version being authoritative.

Dated this twenty-fourth day of May 2006
At The Hague
The Netherlands



Judge Carmel Agius, Presiding

[Seal of the Tribunal]

¹⁶ Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 5 May 2006.